

107TH CONGRESS
1ST SESSION

S. 1054

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2001

Mr. KOHL (for himself and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient Abuse Preven-

5 tion Act”.

6 **SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**
7 **OF NURSING FACILITY RESIDENTS.**

8 (a) NURSING FACILITY AND SKILLED NURSING FA-
9 CILITY REQUIREMENTS.—

1 (1) MEDICAID PROGRAM.—Section 1919(b) of
2 the Social Security Act (42 U.S.C. 1396r(b)) is
3 amended by adding at the end the following new
4 paragraph:

5 “(8) SCREENING OF NURSING FACILITY WORK-
6 ERS.—

7 “(A) BACKGROUND CHECKS ON APPLI-
8 CANTS.—Subject to subparagraph (B)(ii), be-
9 fore hiring a nursing facility worker, a nursing
10 facility shall—

11 “(i) give the worker written notice
12 that the facility is required to perform
13 background checks with respect to appli-
14 cants;

15 “(ii) require, as a condition of employ-
16 ment, that such worker—

17 “(I) provide a written statement
18 disclosing any conviction for a rel-
19 evant crime or finding of patient or
20 resident abuse;

21 “(II) provide a statement signed
22 by the worker authorizing the facility
23 to request the search and exchange of
24 criminal records;

1 “(III) provide in person a copy of
2 the worker’s fingerprints or thumb
3 print, depending upon available tech-
4 nology; and

5 “(IV) provide any other identi-
6 fication information the Secretary
7 may specify in regulation;

8 “(iii) initiate a check of the data col-
9 lection system established under section
10 1128E in accordance with regulations pro-
11 mulgated by the Secretary to determine
12 whether such system contains any disquali-
13 fying information with respect to such
14 worker; and

15 “(iv) if that system does not contain
16 any such disqualifying information—

17 “(I) request that the State ini-
18 tiate a State and national criminal
19 background check on such worker in
20 accordance with the provisions of sub-
21 section (e)(8); and

22 “(II) furnish to the State the in-
23 formation described in subclauses (II)
24 through (IV) of clause (ii) not more
25 than 7 days (excluding Saturdays,

1 Sundays, and legal public holidays
2 under section 6103(a) of title 5,
3 United States Code) after completion
4 of the check against the system initi-
5 ated under clause (iii).

6 “(B) PROHIBITION ON HIRING OF ABUSIVE
7 WORKERS.—

8 “(i) IN GENERAL.—A nursing facility
9 may not knowingly employ any nursing fa-
10 cility worker who has any conviction for a
11 relevant crime or with respect to whom a
12 finding of patient or resident abuse has
13 been made.

14 “(ii) PROVISIONAL EMPLOYMENT.—
15 After complying with the requirements of
16 clauses (i), (ii), and (iii) of subparagraph
17 (A), a nursing facility may provide for a
18 provisional period of employment for a
19 nursing facility worker pending completion
20 of the check against the data collection
21 system described under subparagraph
22 (A)(iii) and the background check de-
23 scribed under subparagraph (A)(iv). Such
24 facility shall maintain direct supervision of

1 the worker during the worker's provisional
2 period of employment.

3 “(C) REPORTING REQUIREMENTS.—A
4 nursing facility shall report to the State any in-
5 stance in which the facility determines that a
6 nursing facility worker has committed an act of
7 resident neglect or abuse or misappropriation of
8 resident property in the course of employment
9 by the facility.

10 “(D) USE OF INFORMATION.—

11 “(i) IN GENERAL.—A nursing facility
12 that obtains information about a nursing
13 facility worker pursuant to clauses (iii) and
14 (iv) of subparagraph (A) may use such in-
15 formation only for the purpose of deter-
16 mining the suitability of the worker for
17 employment.

18 “(ii) IMMUNITY FROM LIABILITY.—A
19 nursing facility that, in denying employ-
20 ment for an applicant (including during
21 the period described in subparagraph
22 (B)(ii)), reasonably relies upon information
23 about such applicant provided by the State
24 pursuant to subsection (e)(8) or section
25 1128E shall not be liable in any action

1 brought by such applicant based on the
2 employment determination resulting from
3 the information.

4 “(iii) CRIMINAL PENALTY.—Whoever
5 knowingly violates the provisions of clause
6 (i) shall be fined in accordance with title
7 18, United States Code, imprisoned for not
8 more than 2 years, or both.

9 “(E) CIVIL PENALTY.—

10 “(i) IN GENERAL.—A nursing facility
11 that violates the provisions of this para-
12 graph shall be subject to a civil penalty in
13 an amount not to exceed—

14 “(I) for the first such violation,
15 \$2,000; and

16 “(II) for the second and each
17 subsequent violation within any 5-year
18 period, \$5,000.

19 “(ii) KNOWING RETENTION OF WORK-
20 ER.—In addition to any civil penalty under
21 clause (i), a nursing facility that—

22 “(I) knowingly continues to em-
23 ploy a nursing facility worker in viola-
24 tion of subparagraph (A) or (B); or

1 “(II) knowingly fails to report a
2 nursing facility worker under subpara-
3 graph (C),

4 shall be subject to a civil penalty in an
5 amount not to exceed \$5,000 for the first
6 such violation, and \$10,000 for the second
7 and each subsequent violation within any
8 5-year period.

9 “(F) DEFINITIONS.—In this paragraph:

10 “(i) CONVICTION FOR A RELEVANT
11 CRIME.—The term ‘conviction for a rel-
12 evant crime’ means any Federal or State
13 criminal conviction for—

14 “(I) any offense described in
15 paragraphs (1) through (4) of section
16 1128(a); and

17 “(II) such other types of offenses
18 as the Secretary may specify in regu-
19 lations, taking into account the sever-
20 ity and relevance of such offenses, and
21 after consultation with representatives
22 of long-term care providers, represent-
23 atives of long-term care employees,
24 consumer advocates, and appropriate
25 Federal and State officials.

1 “(ii) DISQUALIFYING INFORMATION.—

2 The term ‘disqualifying information’ means
3 information about a conviction for a rel-
4 evant crime or a finding of patient or resi-
5 dent abuse.

6 “(iii) FINDING OF PATIENT OR RESI-
7 DENT ABUSE.—The term ‘finding of pa-
8 tient or resident abuse’ means any sub-
9 stantiated finding by a State agency under
10 subsection (g)(1)(C) or a Federal agency
11 that a nursing facility worker has
12 committed—

13 “(I) an act of patient or resident
14 abuse or neglect or a misappropriation
15 of patient or resident property; or

16 “(II) such other types of acts as
17 the Secretary may specify in regula-
18 tions.

19 “(iv) NURSING FACILITY WORKER.—

20 The term ‘nursing facility worker’ means
21 any individual (other than any volunteer)
22 that has direct access to a patient of a
23 nursing facility under an employment or
24 other contract, or both, with such facility.
25 Such term includes individuals who are li-

1 censed or certified by the State to provide
 2 such services, and nonlicensed individuals
 3 providing such services, as defined by the
 4 Secretary, including nurse assistants,
 5 nurse aides, home health aides, and per-
 6 sonal care workers and attendants.”.

7 (2) MEDICARE PROGRAM.—Section 1819(b) of
 8 the Social Security Act (42 U.S.C. 1395i–3(b)) is
 9 amended by adding at the end the following:

10 “(8) SCREENING OF SKILLED NURSING FACIL-
 11 ITY WORKERS.—

12 “(A) BACKGROUND CHECKS ON APPLI-
 13 CANTS.—Subject to subparagraph (B)(ii), be-
 14 fore hiring a skilled nursing facility worker, a
 15 skilled nursing facility shall—

16 “(i) give the worker written notice
 17 that the facility is required to perform
 18 background checks with respect to appli-
 19 cants;

20 “(ii) require, as a condition of employ-
 21 ment, that such worker—

22 “(I) provide a written statement
 23 disclosing any conviction for a rel-
 24 evant crime or finding of patient or
 25 resident abuse;

1 “(II) provide a statement signed
2 by the worker authorizing the facility
3 to request the search and exchange of
4 criminal records;

5 “(III) provide in person a copy of
6 the worker’s fingerprints or thumb
7 print, depending upon available tech-
8 nology; and

9 “(IV) provide any other identi-
10 fication information the Secretary
11 may specify in regulation;

12 “(iii) initiate a check of the data col-
13 lection system established under section
14 1128E in accordance with regulations pro-
15 mulgated by the Secretary to determine
16 whether such system contains any disquali-
17 fying information with respect to such
18 worker; and

19 “(iv) if that system does not contain
20 any such disqualifying information—

21 “(I) request that the State ini-
22 tiate a State and national criminal
23 background check on such worker in
24 accordance with the provisions of sub-
25 section (e)(6); and

1 “(II) furnish to the State the in-
2 formation described in subclauses (II)
3 through (IV) of clause (ii) not more
4 than 7 days (excluding Saturdays,
5 Sundays, and legal public holidays
6 under section 6103(a) of title 5,
7 United States Code) after completion
8 of the check against the system initi-
9 ated under clause (iii).

10 “(B) PROHIBITION ON HIRING OF ABUSIVE
11 WORKERS.—

12 “(i) IN GENERAL.—A skilled nursing
13 facility may not knowingly employ any
14 skilled nursing facility worker who has any
15 conviction for a relevant crime or with re-
16 spect to whom a finding of patient or resi-
17 dent abuse has been made.

18 “(ii) PROVISIONAL EMPLOYMENT.—
19 After complying with the requirements of
20 clauses (i), (ii), and (iii) of subparagraph
21 (A), a skilled nursing facility may provide
22 for a provisional period of employment for
23 a skilled nursing facility worker pending
24 completion of the check against the data
25 collection system described under subpara-

graph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the covered individual during the worker's provisional period of employment.

“(C) REPORTING REQUIREMENTS.—A skilled nursing facility shall report to the State any instance in which the facility determines that a skilled nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

“(D) USE OF INFORMATION.—

“(i) IN GENERAL.—A skilled nursing facility that obtains information about a skilled nursing facility worker pursuant to clauses (iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

“(ii) IMMUNITY FROM LIABILITY.—A skilled nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information

1 about such applicant provided by the State
 2 pursuant to subsection (e)(6) or section
 3 1128E shall not be liable in any action
 4 brought by such applicant based on the
 5 employment determination resulting from
 6 the information.

7 “(iii) CRIMINAL PENALTY.—Whoever
 8 knowingly violates the provisions of clause
 9 (i) shall be fined in accordance with title
 10 18, United States Code, imprisoned for not
 11 more than 2 years, or both.

12 “(E) CIVIL PENALTY.—

13 “(i) IN GENERAL.—A skilled nursing
 14 facility that violates the provisions of this
 15 paragraph shall be subject to a civil pen-
 16 alty in an amount not to exceed—

17 “(I) for the first such violation,
 18 \$2,000; and

19 “(II) for the second and each
 20 subsequent violation within any 5-year
 21 period, \$5,000.

22 “(ii) KNOWING RETENTION OF WORK-
 23 ER.—In addition to any civil penalty under
 24 clause (i), a skilled nursing facility that—

1 “(I) knowingly continues to em-
 2 ploy a skilled nursing facility worker
 3 in violation of subparagraph (A) or
 4 (B); or

5 “(II) knowingly fails to report a
 6 skilled nursing facility worker under
 7 subparagraph (C),

8 shall be subject to a civil penalty in an
 9 amount not to exceed \$5,000 for the first
 10 such violation, and \$10,000 for the second
 11 and each subsequent violation within any
 12 5-year period.

13 “(F) DEFINITIONS.—In this paragraph:

14 “(i) CONVICTION FOR A RELEVANT
 15 CRIME.—The term ‘conviction for a rel-
 16 evant crime’ means any Federal or State
 17 criminal conviction for—

18 “(I) any offense described in
 19 paragraphs (1) through (4) of section
 20 1128(a); and

21 “(II) such other types of offenses
 22 as the Secretary may specify in regu-
 23 lations, taking into account the sever-
 24 ity and relevance of such offenses, and
 25 after consultation with representatives

1 of long-term care providers, represent-
 2 atives of long-term care employees,
 3 consumer advocates, and appropriate
 4 Federal and State officials.

5 “(ii) DISQUALIFYING INFORMATION.—

6 The term ‘disqualifying information’ means
 7 information about a conviction for a rel-
 8 evant crime or a finding of patient or resi-
 9 dent abuse.

10 “(iii) FINDING OF PATIENT OR RESI-

11 DENT ABUSE.—The term ‘finding of pa-
 12 tient or resident abuse’ means any sub-
 13 stantiated finding by a State agency under
 14 subsection (g)(1)(C) or a Federal agency
 15 that a skilled nursing facility worker has
 16 committed—

17 “(I) an act of patient or resident

18 abuse or neglect or a misappropriation
 19 of patient or resident property; or

20 “(II) such other types of acts as

21 the Secretary may specify in regula-
 22 tions.

23 “(iv) SKILLED NURSING FACILITY

24 WORKER.—The term ‘skilled nursing facil-
 25 ity worker’ means any individual (other

1 than any volunteer) that has direct access
 2 to a patient of a skilled nursing facility
 3 under an employment or other contract, or
 4 both, with such facility. Such term includes
 5 individuals who are licensed or certified by
 6 the State to provide such services, and
 7 nonlicensed individuals providing such
 8 services, as defined by the Secretary, in-
 9 cluding nurse assistants, nurse aides, home
 10 health aides, and personal care workers
 11 and attendants.”.

12 (3) TECHNICAL AMENDMENTS.—Effective as if
 13 included in the enactment of section 941 of the
 14 Medicare, Medicaid, and SCHIP Benefits Improve-
 15 ment and Protection Act of 2000 (114 Stat. 2763A–
 16 585), as enacted into law by section 1(a)(6) of Pub-
 17 lic Law 106–554, sections 1819(b) and 1919(b) of
 18 the Social Security Act (42 U.S.C. 1395i–3(b),
 19 1396r(b)), as amended by such section 941 (as so
 20 enacted into law) are each amended by redesignating
 21 the paragraph (8) added by such section as para-
 22 graph (9).

23 (b) STATE REQUIREMENTS.—

24 (1) MEDICAID PROGRAM.—

1 (A) EXPANSION OF STATE REGISTRY TO
 2 COLLECT INFORMATION ABOUT NURSING FACIL-
 3 ITY EMPLOYEES OTHER THAN NURSE AIDES.—
 4 Section 1919 of the Social Security Act (42
 5 U.S.C. 1396r) is amended—

6 (i) in subsection (e)(2)—

7 (I) in the paragraph heading, by
 8 striking “NURSE AIDE REGISTRY” and
 9 inserting “NURSING FACILITY EM-
 10 PLOYEE REGISTRY”;

11 (II) in subparagraph (A)—

12 (aa) by striking “By not
 13 later than January 1, 1989, the”
 14 and inserting “The”;

15 (bb) by striking “a registry
 16 of all individuals” and inserting
 17 “a registry of (I) all individuals”;
 18 and

19 (cc) by inserting before the
 20 period “, and (II) all other nurs-
 21 ing facility employees with re-
 22 spect to whom the State has
 23 made a finding described in sub-
 24 paragraph (B)”;

1 (III) in subparagraph (B), by
 2 striking “involving an individual listed
 3 in the registry” and inserting “involv-
 4 ing a nursing facility employee”; and

5 (IV) in subparagraph (C), by
 6 striking “nurse aide” and inserting
 7 “nursing facility employee or appli-
 8 cant for employment”; and

9 (ii) in subsection (g)(1)—

10 (I) in subparagraph (C)—

11 (aa) in the first sentence, by
 12 striking “nurse aide” and insert-
 13 ing “nursing facility employee”;
 14 and

15 (bb) in the third sentence,
 16 by striking “nurse aide” each
 17 place it appears and inserting
 18 “nursing facility employee”; and

19 (II) in subparagraph (D)—

20 (aa) in the subparagraph
 21 heading, by striking “NURSE
 22 AIDE REGISTRY” and inserting
 23 “NURSING FACILITY EMPLOYEE
 24 REGISTRY”; and

1 (bb) by striking “nurse
 2 aide” each place it appears and
 3 inserting “nursing facility em-
 4 ployee”.

5 (B) FEDERAL AND STATE REQUIREMENT
 6 TO CONDUCT BACKGROUND CHECKS.—Section
 7 1919(e) of the Social Security Act (42 U.S.C.
 8 1396r(e)) is amended by adding at the end the
 9 following:

10 “(8) FEDERAL AND STATE REQUIREMENTS
 11 CONCERNING CRIMINAL BACKGROUND CHECKS ON
 12 NURSING FACILITY EMPLOYEES.—

13 “(A) IN GENERAL.—Upon receipt of a re-
 14 quest by a nursing facility pursuant to sub-
 15 section (b)(8) that is accompanied by the infor-
 16 mation described in subclauses (II) through
 17 (IV) of subsection (b)(8)(A)(ii), a State, after
 18 checking appropriate State records and finding
 19 no disqualifying information (as defined in sub-
 20 section (b)(8)(F)(ii)), shall submit such request
 21 and information to the Attorney General and
 22 shall request the Attorney General to conduct a
 23 search and exchange of records with respect to
 24 the individual as described in subparagraph
 25 (B).

1 “(B) SEARCH AND EXCHANGE OF
2 RECORDS BY ATTORNEY GENERAL.—Upon re-
3 ceipt of a submission pursuant to subparagraph
4 (A), the Attorney General shall direct a search
5 of the records of the Federal Bureau of Inves-
6 tigation for any criminal history records cor-
7 responding to the fingerprints and other posi-
8 tive identification information submitted. The
9 Attorney General shall provide any cor-
10 responding information resulting from the
11 search to the State.

12 “(C) STATE REPORTING OF INFORMATION
13 TO NURSING FACILITY.—Upon receipt of the in-
14 formation provided by the Attorney General
15 pursuant to subparagraph (B), the State
16 shall—

17 “(i) review the information to deter-
18 mine whether the individual has any con-
19 viction for a relevant crime (as defined in
20 subsection (b)(8)(F)(i));

21 “(ii) report to the nursing facility the
22 results of such review; and

23 “(iii) in the case of an individual with
24 a conviction for a relevant crime, report
25 the existence of such conviction of such in-

dividual to the database established under
section 1128E.

“(D) FEES FOR PERFORMANCE OF CRIMINAL
BACKGROUND CHECKS.—

“(i) AUTHORITY TO CHARGE FEES.—

“(I) ATTORNEY GENERAL.—The
Attorney General may charge a fee to
any State requesting a search and ex-
change of records pursuant to this
paragraph and subsection (b)(8) for
conducting the search and providing
the records. The amount of such fee
shall not exceed the lesser of the ac-
tual cost of such activities or \$50.
Such fees shall be available to the At-
torney General, or, in the Attorney
General’s discretion, to the Federal
Bureau of Investigation, until ex-
pended.

“(II) STATE.—A State may
charge a nursing facility a fee for ini-
tiating the criminal background check
under this paragraph and subsection
(b)(8), including fees charged by the
Attorney General, and for performing

1 the review and report required by sub-
 2 paragraph (C). The amount of such
 3 fee shall not exceed the actual cost of
 4 such activities.

5 “(ii) PROHIBITION ON CHARGING AP-
 6 PLICANTS OR EMPLOYEES.—An entity may
 7 not impose on an applicant for employment
 8 or an employee any charges relating to the
 9 performance of a background check under
 10 this paragraph.

11 “(E) REGULATIONS.—

12 “(i) IN GENERAL.—In addition to the
 13 Secretary’s authority to promulgate regula-
 14 tions under this title, the Attorney Gen-
 15 eral, in consultation with the Secretary,
 16 may promulgate such regulations as are
 17 necessary to carry out the Attorney Gen-
 18 eral’s responsibilities under this paragraph
 19 and subsection (b)(8), including regula-
 20 tions regarding the security, confiden-
 21 tiality, accuracy, use, destruction, and dis-
 22 semination of information, audits and rec-
 23 ordkeeping, and the imposition of fees.

24 “(ii) APPEAL PROCEDURES.—The At-
 25 torney General, in consultation with the

1 Secretary, shall promulgate such regula-
2 tions as are necessary to establish proce-
3 dures by which an applicant or employee
4 may appeal or dispute the accuracy of the
5 information obtained in a background
6 check conducted under this paragraph. Ap-
7 peals shall be limited to instances in which
8 an applicant or employee is incorrectly
9 identified as the subject of the background
10 check, or when information about the ap-
11 plicant or employee has not been updated
12 to reflect changes in the applicant's or em-
13 ployee's criminal record.

14 “(F) REPORT.—Not later than 2 years
15 after the date of enactment of this paragraph,
16 the Attorney General shall submit a report to
17 Congress on—

18 “(i) the number of requests for
19 searches and exchanges of records made
20 under this section;

21 “(ii) the disposition of such requests;
22 and

23 “(iii) the cost of responding to such
24 requests.”.

25 (2) MEDICARE PROGRAM.—

1 (A) EXPANSION OF STATE REGISTRY TO
2 COLLECT INFORMATION ABOUT SKILLED NURS-
3 ING FACILITY EMPLOYEES OTHER THAN NURSE
4 AIDES.—Section 1819 of the Social Security
5 Act (42 U.S.C. 1395i–3) is amended—

6 (i) in subsection (e)(2)—

7 (I) in the paragraph heading, by
8 striking “NURSE AIDE REGISTRY” and
9 inserting “SKILLED NURSING CARE
10 EMPLOYEE REGISTRY”;

11 (II) in subparagraph (A)—

12 (aa) by striking “By not
13 later than January 1, 1989, the”
14 and inserting “The”;

15 (bb) by striking “a registry
16 of all individuals” and inserting
17 “a registry of (I) all individuals”;
18 and

19 (cc) by inserting before the
20 period “, and (II) all other
21 skilled nursing facility employees
22 with respect to whom the State
23 has made a finding described in
24 subparagraph (B)”;

1 (III) in subparagraph (B), by
 2 striking “involving an individual listed
 3 in the registry” and inserting “involv-
 4 ing a skilled nursing facility em-
 5 ployee”; and

6 (IV) in subparagraph (C), by
 7 striking “nurse aide” and inserting
 8 “skilled nursing facility employee or
 9 applicant for employment”; and

10 (ii) in subsection (g)(1)—

11 (I) in subparagraph (C)—

12 (aa) in the first sentence, by
 13 striking “nurse aide” and insert-
 14 ing “skilled nursing facility em-
 15 ployee”; and

16 (bb) in the third sentence,
 17 by striking “nurse aide” each
 18 place it appears and inserting
 19 “skilled nursing facility em-
 20 ployee”; and

21 (II) in subparagraph (D)—

22 (aa) in the subparagraph
 23 heading, by striking “NURSE
 24 AIDE REGISTRY” and inserting

1 “NURSING FACILITY EMPLOYEE
2 REGISTRY”; and

3 (bb) by striking “nurse
4 aide” each place it appears and
5 inserting “nursing facility em-
6 ployee”.

7 (B) FEDERAL AND STATE REQUIREMENT
8 TO CONDUCT BACKGROUND CHECKS.—Section
9 1819(e) of the Social Security Act (42 U.S.C.
10 1395i–3(e)) is amended by adding at the end
11 the following:

12 “(6) FEDERAL AND STATE REQUIREMENTS
13 CONCERNING CRIMINAL BACKGROUND CHECKS ON
14 SKILLED NURSING FACILITY EMPLOYEES.—

15 “(A) IN GENERAL.—Upon receipt of a re-
16 quest by a skilled nursing facility pursuant to
17 subsection (b)(8) that is accompanied by the in-
18 formation described in subclauses (II) through
19 (IV) of subsection (b)(8)(A)(ii), a State, after
20 checking appropriate State records and finding
21 no disqualifying information (as defined in sub-
22 section (b)(8)(F)(ii)), shall submit such request
23 and information to the Attorney General and
24 shall request the Attorney General to conduct a
25 search and exchange of records with respect to

1 the individual as described in subparagraph
 2 (B).

3 “(B) SEARCH AND EXCHANGE OF
 4 RECORDS BY ATTORNEY GENERAL.—Upon re-
 5 ceipt of a submission pursuant to subparagraph
 6 (A), the Attorney General shall direct a search
 7 of the records of the Federal Bureau of Inves-
 8 tigation for any criminal history records cor-
 9 responding to the fingerprints and other posi-
 10 tive identification information submitted. The
 11 Attorney General shall provide any cor-
 12 responding information resulting from the
 13 search to the State.

14 “(C) STATE REPORTING OF INFORMATION
 15 TO SKILLED NURSING FACILITY.—Upon receipt
 16 of the information provided by the Attorney
 17 General pursuant to subparagraph (B), the
 18 State shall—

19 “(i) review the information to deter-
 20 mine whether the individual has any con-
 21 viction for a relevant crime (as defined in
 22 subsection (b)(8)(F)(i));

23 “(ii) report to the skilled nursing fa-
 24 cility the results of such review; and

1 “(iii) in the case of an individual with
 2 a conviction for a relevant crime, report
 3 the existence of such conviction of such in-
 4 dividual to the database established under
 5 section 1128E.

6 “(D) FEES FOR PERFORMANCE OF CRIMI-
 7 NAL BACKGROUND CHECKS.—

8 “(i) AUTHORITY TO CHARGE FEES.—

9 “(I) ATTORNEY GENERAL.—The
 10 Attorney General may charge a fee to
 11 any State requesting a search and ex-
 12 change of records pursuant to this
 13 paragraph and subsection (b)(8) for
 14 conducting the search and providing
 15 the records. The amount of such fee
 16 shall not exceed the lesser of the ac-
 17 tual cost of such activities or \$50.
 18 Such fees shall be available to the At-
 19 torney General, or, in the Attorney
 20 General’s discretion, to the Federal
 21 Bureau of Investigation until ex-
 22 pended.

23 “(II) STATE.—A State may
 24 charge a skilled nursing facility a fee
 25 for initiating the criminal background

1 check under this paragraph and sub-
2 section (b)(8), including fees charged
3 by the Attorney General, and for per-
4 forming the review and report re-
5 quired by subparagraph (C). The
6 amount of such fee shall not exceed
7 the actual cost of such activities.

8 “(ii) PROHIBITION ON CHARGING AP-
9 PPLICANTS OR EMPLOYEES.—An entity may
10 not impose on an applicant for employment
11 or an employee any charges relating to the
12 performance of a background check under
13 this paragraph.

14 “(E) REGULATIONS.—

15 “(i) IN GENERAL.—In addition to the
16 Secretary’s authority to promulgate regula-
17 tions under this title, the Attorney Gen-
18 eral, in consultation with the Secretary,
19 may promulgate such regulations as are
20 necessary to carry out the Attorney Gen-
21 eral’s responsibilities under this paragraph
22 and subsection (b)(9), including regula-
23 tions regarding the security confidentiality,
24 accuracy, use, destruction, and dissemina-

1 tion of information, audits and record-
2 keeping, and the imposition of fees.

3 “(ii) APPEAL PROCEDURES.—The At-
4 torney General, in consultation with the
5 Secretary, shall promulgate such regula-
6 tions as are necessary to establish proce-
7 dures by which an applicant or employee
8 may appeal or dispute the accuracy of the
9 information obtained in a background
10 check conducted under this paragraph. Ap-
11 peals shall be limited to instances in which
12 an applicant or employee is incorrectly
13 identified as the subject of the background
14 check, or when information about the ap-
15 plicant or employee has not been updated
16 to reflect changes in the applicant’s or em-
17 ployee’s criminal record.

18 “(F) REPORT.—Not later than 2 years
19 after the date of enactment of this paragraph,
20 the Attorney General shall submit a report to
21 Congress on—

22 “(i) the number of requests for
23 searches and exchanges of records made
24 under this section;

1 “(ii) the disposition of such requests;
 2 and
 3 “(iii) the cost of responding to such
 4 requests.”.

5 (c) APPLICATION TO OTHER ENTITIES PROVIDING
 6 HOME HEALTH OR LONG-TERM CARE SERVICES.—

7 (1) MEDICAID.—Section 1902(a) of the Social
 8 Security Act (42 U.S.C. 1396a) is amended—

9 (A) in paragraph (65), by striking the pe-
 10 riod and inserting “; and”; and

11 (B) by inserting after paragraph (65) the
 12 following:

13 “(66) provide that any entity that is eligible to
 14 be paid under the State plan for providing home
 15 health services or long-term care services for which
 16 medical assistance is available under the State plan
 17 to individuals requiring long-term care complies with
 18 the requirements of subsections (b)(8) and (e)(8) of
 19 section 1919.”.

20 (2) MEDICARE.—Part D of title XVIII of the
 21 Social Security Act (42 U.S.C. 1395x et seq.) is
 22 amended by adding at the end the following:

1 “APPLICATION OF SKILLED NURSING FACILITY PREVEN-
2 TIVE ABUSE PROVISIONS TO ANY PROVIDER OF
3 SERVICES OR OTHER ENTITY PROVIDING HOME
4 HEALTH OR LONG-TERM CARE SERVICES

5 “SEC. 1897. The requirements of subsections (b)(8)
6 and (e)(6) of section 1819 shall apply to any provider of
7 services or any other entity that is eligible to be paid under
8 this title for providing home health services or long-term
9 care services to an individual entitled to benefits under
10 part A or enrolled under part B (including an individual
11 provided with a Medicare+Choice plan offered by a
12 Medicare+Choice organization under part C).”.

13 (d) REIMBURSEMENT OF REASONABLE COSTS FOR
14 BACKGROUND CHECKS.—The Secretary of Health and
15 Human Services shall factor into any payment system
16 under titles XVIII and XIX of the Social Security Act the
17 reasonable costs of the requirements of sections
18 1819(b)(8) and 1919(b)(8) of such Act, as added by this
19 section, incurred by any entity subject to such require-
20 ments.

1 **SEC. 3. INCLUSION OF ABUSIVE WORKERS IN THE DATA-**
 2 **BASE ESTABLISHED AS PART OF NATIONAL**
 3 **HEALTH CARE FRAUD AND ABUSE DATA COL-**
 4 **LECTION PROGRAM.**

5 (a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-
 6 TERM CARE FACILITY OR PROVIDER.—Section
 7 1128E(g)(1)(A) of the Social Security Act (42 U.S.C.
 8 1320a–7e(g)(1)(A)) is amended—

9 (1) by redesignating clause (v) as clause (vi);

10 and

11 (2) by inserting after clause (iv), the following:

12 “(v) A finding of abuse or neglect of
 13 a patient or a resident of a long-term care
 14 facility, or misappropriation of such a pa-
 15 tient’s or resident’s property.”.

16 (b) COVERAGE OF LONG-TERM CARE FACILITY OR
 17 PROVIDER EMPLOYEES.—Section 1128E(g)(2) of the So-
 18 cial Security Act (42 U.S.C. 1320a–7e(g)(2)) is amended
 19 by inserting “, and includes any individual of a long-term
 20 care facility or provider (other than any volunteer) that
 21 has direct access to a patient or resident of such a facility
 22 under an employment or other contract, or both, with the
 23 facility or provider (including individuals who are licensed
 24 or certified by the State to provide services at the facility
 25 or through the provider, and nonlicensed individuals, as
 26 defined by the Secretary, providing services at the facility

1 or through the provider, including nurse assistants, nurse
 2 aides, home health aides, and personal care workers and
 3 attendants)” before the period.

4 (c) REPORTING BY LONG-TERM CARE FACILITIES OR
 5 PROVIDERS.—

6 (1) IN GENERAL.—Section 1128E(b)(1) of the
 7 Social Security Act (42 U.S.C. 1320a–7e(b)(1)) is
 8 amended by striking “and health plan” and insert-
 9 ing “, health plan, and long-term care facility or
 10 provider”.

11 (2) CORRECTION OF INFORMATION.—Section
 12 1128E(c)(2) of the Social Security Act (42 U.S.C.
 13 1320a–7e(c)(2)) is amended by striking “and health
 14 plan” and inserting “, health plan, and long-term
 15 care facility or provider”.

16 (d) ACCESS TO REPORTED INFORMATION.—Section
 17 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a–
 18 7e(d)(1)) is amended by striking “and health plans” and
 19 inserting “, health plans, and long-term care facilities or
 20 providers”.

21 (e) MANDATORY CHECK OF DATABASE BY LONG-
 22 TERM CARE FACILITIES OR PROVIDERS.—Section
 23 1128E(d) of the Social Security Act (42 U.S.C. 1320a–
 24 7e(d)) is amended by adding at the end the following:

1 “(3) MANDATORY CHECK OF DATABASE BY
 2 LONG-TERM CARE FACILITIES OR PROVIDERS.—A
 3 long-term care facility or provider shall check the
 4 database maintained under this section prior to hir-
 5 ing under an employment or other contract, or both,
 6 any individual as an employee of such a facility or
 7 provider who will have direct access to a patient or
 8 resident of the facility or provider (including individ-
 9 uals who are licensed or certified by the State to
 10 provide services at the facility or through the pro-
 11 vider, and nonlicensed individuals, as defined by the
 12 Secretary, that will provide services at the facility or
 13 through the provider, including nurse assistants,
 14 nurse aides, home health aides, and personal care
 15 workers and attendants).”.

16 (f) DEFINITION OF LONG-TERM CARE FACILITY OR
 17 PROVIDER.—Section 1128E(g) of the Social Security Act
 18 (42 U.S.C. 1320a–7e(g)) is amended by adding at the end
 19 the following:

20 “(6) LONG-TERM CARE FACILITY OR PRO-
 21 VIDER.—The term ‘long-term care facility or pro-
 22 vider’ means a skilled nursing facility (as defined in
 23 section 1819(a)), a nursing facility (as defined in
 24 section 1919(a)), a home health agency, a hospice
 25 facility, an intermediate care facility for the mentally

1 retarded (as defined in section 1905(d)), or any
2 other facility that provides, or provider of, long-term
3 care services or home health services and receives
4 payment for such services under the medicare pro-
5 gram under title XVIII or the medicaid program
6 under title XIX.”.

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
8 authorized to be appropriated to carry out the amend-
9 ments made by this section, \$10,200,000 for fiscal year
10 2002.

11 **SEC. 4. PREVENTION AND TRAINING DEMONSTRATION**
12 **PROJECT.**

13 (a) ESTABLISHMENT.—The Secretary of Health and
14 Human Services shall establish a demonstration program
15 to provide grants to develop information on best practices
16 in patient abuse prevention training (including behavior
17 training and interventions) for managers and staff of hos-
18 pital and health care facilities.

19 (b) ELIGIBILITY.—To be eligible to receive a grant
20 under subsection (a), an entity shall be a public or private
21 nonprofit entity and prepare and submit to the Secretary
22 of Health and Human Services an application at such
23 time, in such manner, and containing such information as
24 the Secretary may require.

1 (c) USE OF FUNDS.—Amounts received under a
2 grant under this section shall be used to—

3 (1) examine ways to improve collaboration be-
4 tween State health care survey and provider certifi-
5 cation agencies, long-term care ombudsman pro-
6 grams, the long-term care industry, and local com-
7 munity members;

8 (2) examine patient care issues relating to regu-
9 latory oversight, community involvement, and facility
10 staffing and management with a focus on staff
11 training, staff stress management, and staff super-
12 vision;

13 (3) examine the use of patient abuse prevention
14 training programs by long-term care entities, includ-
15 ing the training program developed by the National
16 Association of Attorneys General, and the extent to
17 which such programs are used; and

18 (4) identify and disseminate best practices for
19 preventing and reducing patient abuse.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated such sums as may be nec-
22 essary to carry out this section.

23 **SEC. 5. EFFECTIVE DATE.**

24 The provisions of and amendments made by the Act
25 shall apply, without regard to whether implementing regu-

1 lations are in effect, to any individual applying for employ-
2 ment or hired for such employment—

3 (1) by any skilled nursing facility (as defined in
4 section 1819(a) of the Social Security Act) or any
5 nursing facility (as defined in section 1919(a) of
6 such Act), on or after the date which is 6 months
7 after the date of enactment of this Act,

8 (2) by any home health agency, on or after the
9 date which is 12 months after such date of enact-
10 ment, and

11 (3) by any hospice facility, any intermediate
12 care facility for the mentally retarded (as defined in
13 section 1905(d) of the Social Security Act), or any
14 other facility that provides long-term care services
15 and receives payment for such services under the
16 medicare program under title XVIII of such Act or
17 the medicaid program under title XIX of such Act,
18 on or after the date which is 18 months after such
19 date of enactment.

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